IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRI.REVISION APPLICATION NO. 49 OF 1991

Shri K.Raja Shekar ..Applicant.

V/s.

M/s. Automobile Products of India Ltd. & Ors. ..Respondents.

Shri H.V. Mehta for the Applicant.
Shri Prakash Naik for Respondents 1 to 5.

WITH
CRI. REVISION APPLICATION NO. 50 OF 1991

Shri B.S.Singh ..Applicant.

v/s.

Nat Steel Equipment Pvt.Ltd., and Ors. ..Respondents.

Shri H.V. Mehta for the Applicant.
Smt. Nita Madhawan for the Respondent- Absent.

WITH
CRI. REVISION APPLCIATION NO. 51 OF 1991

Shri T. Jena ..Applicant.

v/s.

M/s. Indian Hume Pipe Co.Ltd. and 12 others. ..Respondents.

Shri H.V.Mehta for the Applicant.
Shri K. N. Kore for the Respondent -Absent.

CORAM : A.M.KHANWILKAR, J.
DATED : JANUARY 13, 2005

PC :-

1. Heard counsel for the parties. All these three matters can be disposed of together by a common order, as involve same issue.

2. The respondents in the respective Applications were tried for the offence punishable under section 276 (B) and 278(B) of the Income Tax Act, 1961. The trial court by the impugned judgement has discharged the Respondents under section 245 (2) of the Code of Criminal Procedure, solely on the ground that the sanction order as issued for prosecuting the Respondents was illegal. The judgment runs into about 23 pages but, in my opinion, the same is of no assistance and cannot stand the test of judicial scrutiny. Sufficie it to observe that the reasons recorded therein clearly overlook the settled legal position that the matters which weighed with the lower court are relevant at the trial and cannot be made basis for discharge. So udnerstood, the orders impugned in these applications cannot be sustained. I am not recording detail reasons in this regard as agreed by the counsel for the parties, as the respondents are willing to go back before the trial court on the understanding that, on restoration of the complaint to the file of the trial court they shall

immediately move formal application(s) before the appropriate authority for compounding of the offence, which is of a technical nature. Shri Mehta for the Applicants submits that if such application(s) is filed, the same shall be liberally dealt with as the matter relating to technical offence of T.D.S. provisions, as is the approach adopted by the department or Chief Commissioner of Income Tax in those matters. It is brought to my notice that in all pending cases of similar type, which were about 137 in number, the authority has accepted that position and allowed the offence to be compounded.

3. Accordingly, on restoration of the complaints to the file of the trial court, consequent to this order, if the respondents prefer the proposed application(s) before the appropriate authority for compounding of the offence, the same should be disposed of on the same terms as has been done in respect of the other cases similarly placed and whose applications were considered in the light of the observations made by this court in its order dated 7th September, 2001.

4. Accordingly, all these applications succeed on

the above terms and the subject complaints are restored to the file of the trial court to its original numbers for being dealt with in accordance with law.

5. The respondents shall apply to the appropriate authority for compounding of the alleged offence within four weeks from now; and those applications shall be disposed of by the appropriate authority, keeping in mind the observations made in this order, within four weeks from the date of presentation before it.

6. These Applications are disposed of on the above terms.

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